(2)

Supreme Court, U.S.
FILED
AUG 22 1996
CLERK

No. 96-132

In The

Supreme Court of the United States

October Term, 1995

ALEX WAYNE BOLT, NABESNA MINING PARTNERS, and WHITE MOUNTAIN MINING PARTNERS,

Petitioners,

vs.

PTARMIGAN COMPANY, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Alaska Supreme Court

BRIEF FOR PTARMIGAN COMPANY, INC. IN OPPOSITION

KIRSTEN TINGLUM
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August 23, 1996

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12 pp

I. INTRODUCTION

The decision from which Petitioners seek to appeal, *White Mountain Mining Partners et al. v. Ptarmigan Company, Inc.*, 906 P.2d 357 (Alaska 1995), is based on the Alaska Supreme Court's interpretation of the Alaska Rules of Civil Procedure. It involves no federal law issues. However, Petitioners erroneously attempt to bootstrap to their state court appeal the issue of the validity of an order of United States Bankruptcy Court. The Bankruptcy Court's action should have been appealed to a federal district court and is not properly reviewed here.

The Petition for Writ of Certiorari (the "Petition") is filled with misstatements and false accusations regarding both the substance and the procedural history of the case. However, Ptarmigan Company, Inc. ("Ptarmigan") limits this opposition, pursuant to Supreme Court Rule 15(2), to describing only those perceived misstatements of fact and law that bear on what issues would properly be before the court if certiorari were granted.

II. PETITIONERS' BANKRUPTCY LAW ISSUE IS NOT PROPERLY BEFORE THE COURT

At the time that Petitioners appealed to the Alaska Supreme Court, Petitioner Bolt was the debtor in a Chapter 11 bankruptcy pending before the United States Bankruptcy Court for the District of Alaska (the "Bankruptcy Court"). The Alaska Supreme Court partially stayed all of Petitioners' appeals pending its receipt of the Bankruptcy

Court order granting relief from the automatic stay in Bolt's bankruptcy. App. 1.[1]

At Ptarmigan's request, the Bankruptcy Court properly entered an order granting Ptarmigan relief from the automatic stay in effect in Bolt's bankruptcy, to allow Petitioners' state court appeal to proceed. App. 2. After it received notice of the Bankruptcy Court order granting relief from the stay, the Alaska Supreme Court allowed the appeal to go forward. App. 3.

Jurisdiction over an appeal of an order of a United States Bankruptcy Court lies with the United States District Court or the Bankruptcy Appellate Panel. 28 U.S.C. § 158. Therefore, Petitioners' attempt to appeal the validity and propriety of the Bankruptcy Court order through this appeal of a decision of the Alaska Supreme Court is improper.

III. CONCLUSION

This case rests entirely on an interpretation of Alaska state law. Petitioners' attempt to inject a federal law issue by complaining about the validity of an order of the Bankruptcy Court must fail. The Bankruptcy Court properly issued an order granting Ptarmigan relief from stay to conclude the appeal that Petitioners themselves had filed in the Alaska Supreme Court. The Alaska Supreme Court properly complied with the Bankruptcy Court order granting relief from stay. Petitioners' arguments

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[1] Petitioner Bolt filed his appeal *pro se*. The other two petitioners are entities entirely controlled by Bolt. The other two petitioners were not in bankruptcy.

regarding the propriety or validity of the Bankruptcy Court's order should have been made to a federal court or to a panel appointed by a federal court pursuant to 28 U.S.C. § 158, and are not properly before this court on appeal of the state court decision.

Ptarmigan respectfully requests that the Court deny the Petition.

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August 23, 1996

APPENDIX 1

IN THE SUPREME COURT OF THE STATE OF ALASKA

WHITE MOUNTAIN MINING PARTNERS, an Alaska Limited Partnership, and WAYNE BOLT, Appellants, v. PTARMIGAN COMPANY, INC., Appellee.	Supreme Court No. S-5743 ORDER
NABESNA MINING PARTNERS, an Alaska Limited Partnership, Appellant, v. PTARMIGAN COMPANY, INC., Appellee.	Supreme Court No. S-5744 (Filed May 13, 1994)

Superior Court No. 3AN-90-9008 Civil

On consideration of the multiplicity of motions and oppositions, filed recently by the parties,

IT IS ORDERED:

1. Appellant White Mountain's motion for an extension to file reply brief is GRANTED. The reply brief, lodged on April 25, 1994, is accepted as filed, subject to Appellate Rule 212 check.

2. Appellants Bolt's and Nabesna Mining's motions for extension of time to file reply briefs are GRANTED.

The briefs are now due on or before May 26, 1994. NO FURTHER EXTENSIONS WILL BE GRANTED.

3. Appellee Ptarmigan Company's motion to prohibit further time extensions is GRANTED to the extent that no further extensions will be permitted beyond the dates set out in No. 2 above.

4. Appellee Ptarmigan Company's motion for leave to reply to the opposition to its motion to supplement the record is GRANTED, and Appellant Bolt's cross motion to strike the reply is DENIED.

5. Appellee Ptarmigan Company's motion to supplement the record with a portion of the transcript from the January 20, 1994, Bankruptcy meeting is GRANTED. The partial transcript shall be added to the record on appeal as pages 3793 through 3804.

6. Appellant Bolt's motion for stay of appeal is GRANTED as follows: Reply briefs are still to be filed within the time limits provided in paragraph No. 2 above. If these appellants fail to comply with this time extension, then no reply briefs will be accepted from them after the bankruptcy proceedings are completed or the stay order is lifted under 11 U.S.C. Section 362(e) upon Appellee's request for relief. The parties shall immediately notify the court when bankruptcy proceedings are completed or the stay order is lifted. This matter will then be scheduled for the first available oral argument date that is at least 30 days later than the date notice is received.

7. If bankruptcy proceedings last longer than three months from the date of this order or the bankruptcy stay order is not lifted before that time, Appellant Bolt shall

notify this court on August 12, 1994, and every three months thereafter during the pendency of bankruptcy proceedings, of the status of the bankruptcy proceedings. If no such notification is received, this court will assume that bankruptcy proceedings are concluded, the stay in this court will be vacated, and this matter will be scheduled for oral argument.

Entered by direction of Chief Justice Moore at Anchorage, Alaska on May 12, 1994.

CLERK OF THE
SUPREME COURT

/s/ Jan Hansen
JAN HANSEN

cc: Justices
Jeffrey J. Mayhook
Wayne Bolt
Kristen [sic] Tinglum

APPENDIX 2

THE SUPREME COURT OF THE STATE OF ALASKA

WHITE MOUNTAIN MINING PARTNERS, and WAYNE BOLT, Appellants, v. PTARMIGAN COMPANY, INC., Appellee.	
NABESNA MINING PARTNERS, Appellant, v. PTARMIGAN COMPANY, INC., Appellee.	Trial Court No. 3AN-90-9008 Civ. Supreme Court No. S-5743/S-5744

NOTICE THAT BANKRUPTCY STAY IS LIFTED

In compliance with the Alaska Supreme Court's order dated May 12, 1994, Ptarmigan Company, Inc. ("Ptarmigan") notifies the Court that the bankruptcy stay affecting this appeal was lifted on May 20, 1994. The order lifting the stay is attached to this notice.

DATED at Anchorage, Alaska this 24th day of May 1994.

ASHBURN & MASON
Attorneys for Ptarmigan
Company, Inc.

By: /s/ Don McClintock
for Kirsten Tinglum

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on the 24th day of May 1994, to:

J. Jeffrey Mayhook
425 G Street, Suite 760
Anchorage, AK 99501

Wayen Bolt, individually and for
Nabesna Mining Partners
1317 W. Northern Lights Blvd., #706
Anchorage, Alaska 99503

ASHBURN & MASON

By: /s/ Debbie Jarland
Debbie Jarland

N:/DJJ/7357/CAPTION

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(907) 276-4331

Attorneys for Ptarmigan Company, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re	)	Case No.
	)	A93-00619-DMD
ALEX WAYNE BOLT,	)	Chapter 7
	)	
Debtor.	)	
	)	

ORDER GRANTING RELIEF FROM STAY

(Filed May 20, 1994)

Ptarmigan Company, Inc. ("Ptarmigan") moved the court for relief from stay by motion dated and filed April 12, 1994. It properly noticed the motion that same day, admonishing the Debtor and others that "you have until April 27, 1994 within which to file written objections to this motion." It advised Debtor and other interested parties that *"THE PARTY DESIRING THE STAY TO REMAIN IN EFFECT MUST REQUEST A HEARING AND BE CERTAIN THAT A HEARING IS SCHEDULED WITHIN THIRTY DAYS OF THIS MOTION."* (Emphasis in original.)

On April 29, 1994 Ptarmigan filed a Certificate of No Objections and Order Granting Relief From Stay. On May 2, 1994, five days after the lapse of the deadline for filing

objections, Debtor untimely filed an Opposition To Ptarmigan Company Inc.'s Motion For Relief From Stay. Debtor never filed a request for hearing as required by Ptarmigan's notice and 11 U.S.C. § 362(e).

Thirty days from the date of Ptarmigan's Motion for Relief From Stay lapsed on May 12, 1994. Given that Debtor neither timely opposed Ptarmigan's Motion For Relief From Stay nor requested a hearing within the time required by 11 U.S.C. § 362(e), the stay is terminated.

IT IS SO ORDERED

DATED: 5/19/94

/s/ Donald MacDonald
U. S. Bankruptcy Court Judge

CERTIFICATE

I hereby certify that a copy of the foregoing was mailed this 17th day of May 1994, to:

William D. Artus
Kenneth Battley, Esq., and
Alex Wayne Bolt

By /s/ Deborah Jarland
Deborah Jarland

APPENDIX 3

APPELLATE COURTS CLERK
303 K STREET
ANCHORAGE, AK 9950-1

Case Title: NEBESNA [sic] MINING V. PTARMIGAN CO.
Supreme Court Case #: S5744

MEMORANDUM 05/26/94

S-5743/5744. ON MAY 24, 1994, THE CLERK'S OFFICE RECEIVED NOTICE THAT THE BANKRUPTCY STAY IS LIFTED. THIS CASE WILL BE SCHEDULED ON THE NEXT AVAILABLE ORAL ARGUMENT CALENDAR FOR THE SUPREME COURT.

Clerk of The Appellate Courts
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